

bencruzple

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FILED
DISTRICT COURT OF GUAM

SEP 21 2007 *mb*

JEANNE G. QUINATA
Clerk of Court

**IN THE UNITED STATES DISTRICT COURT
FOR THE TERRITORY OF GUAM**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BEN JOE PEREZ CRUZ,

Defendant.

CRIMINAL CASE NO. 07-00071

PLEA AGREEMENT

Pursuant to Rule 11(c)(1)(B), the United States and the defendant, BEN JOE PEREZ CRUZ, enter into the following plea agreement:

1. The defendant, BEN JOE PEREZ CRUZ, agrees to enter a guilty plea to Count I of an Indictment charging him with Theft of Government Property, in violation of Title 18, United States Code, Section 641. Counts II & III of the indictment will be dismissed after sentencing.

2. The defendant understands that the maximum sentence for Theft of Government Property in an amount greater than \$1,000.00, in violation of 18 U.S.C. § 641, as a Class C felony as specified in 18 U.S.C. § 3559, is imprisonment for not more than ten years and a maximum fine of \$250,000.00, together with any restitution as the court may order, and a \$100 special assessment fee as set forth in 18 U.S.C. § 3013. Any sentence of incarceration may include a term of supervised release of not more than three years as set forth in 18 U.S.C. § 3583(b)(2). If the court revokes a sentence of supervised release, the court may incarcerate the

1 Defendant up to an additional term of not more than two years as set forth in 18 U.S.C. §
2 3583(e)(3). The total \$100 special assessment fee must be paid upon sentencing. The
3 government will recommend that defendant receive the low end of the sentencing guidelines, a
4 fine, and credit for time served, if any.

5 3. If defendant is financially unable to immediately pay the fine in full, defendant agrees
6 to make a full disclosure of his financial status to the United States Attorney's Office by
7 completing a Financial Disclosure Form (OBD-500) for purpose of fixing a monthly payment
8 schedule. Defendant understands that, by law, interest accrues on any remaining balance of the
9 debt.

10 4. The defendant understands that to establish a violation of Theft of Government
11 Property, in violation of Title 18, United States Code, Section 641, the government must prove
12 each of the following elements beyond a reasonable doubt:

13 First, that the defendant knowingly and willingly stole property with the intention of
14 depriving the owner of the use or benefit of the property;

15 Second, the property belonged to the United States; and

16 Third, the value of the property was more than \$1000.

17 5. The defendant understands that the Sentencing Guidelines are advisory only. The
18 Court may still utilize the sentencing guidelines as an aid to determine the sentence to be
19 imposed. The government and the Defendant stipulate to the following facts for purposes of the
20 sentencing:

21 a. The defendant was born in 1983 and is a citizen of the United States.

22 b. That beginning on or about January 2007 and continuing up to on or about February
23 2007 in the District of Guam, the defendant, BEN JOE PEREZ CRUZ, willfully and knowingly,
24 did steal and purloin United States currency and property from the Navy Exchange, Guam. That
25 the defendant, BEN JOE PEREZ CRUZ, knowingly and willingly stole the currency and property
26 with the intention of depriving the owner of the use or benefit of the property. That United States
27 currency and property from the Navy Exchange, Guam, is property of the United States. That the
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1 value of the currency and property stolen and purloined from the Navy Exchange, Guam, was of
2 the value of \$3,349.98. That the currency and property from the Navy Exchange, Guam, had
3 come into the possession of the defendant, BEN JOE PEREZ CRUZ, by virtue of him tendering
4 and proffering checks with insufficient funds written by Izayah Santos to the Guam Navy
5 Exchange Cashier Yvonne Santos at the Navy Exchange, Guam.

6 That on January 30, 2007, Izayah Santos drafted a worthless check totaling \$499.99 for a
7 vacuum cleaner and handed the check to the defendant, BEN JOE PEREZ CRUZ, who then
8 tendered the worthless check to Yvonne Santos, who was the cashier. Later that same day,
9 Izayah Santos returned the vacuum cleaner for cash after presenting the receipt that was given to
10 the defendant, BEN JOE PEREZ CRUZ, earlier in the day.

11 That on February 6, 2007, the defendant, BEN JOE PEREZ CRUZ, entered the Navy
12 Exchange with Izayah Santos. Izayah Santos handed the defendant, BEN JOE PEREZ CRUZ, a
13 NEX gift card purchased with a worthless check which the defendant, BEN JOE PEREZ CRUZ,
14 used to purchase merchandise.

15 That on February 7, 2007, Izayah Santos drafted two checks totaling \$800.00 and
16 \$150.00, respectively. Izayah Santos handed the two checks to the defendant, BEN JOE PEREZ
17 CRUZ, who tendered the checks to Yvonne Santos, who was the Navy Exchange cashier.

18 That on February 9, 2007, Izayah Santos drafted two checks totaling \$800.00 and
19 \$1099.99, respectively. Izayah Santos then handed the two checks to the defendant, BEN JOE
20 PEREZ CRUZ, who tendered the checks to Yvonne Santos, who was the cashier.

21 That during the entire criminal enterprise the defendant, BEN JOE PEREZ CRUZ, knew
22 Izayah Santos was presenting him with worthless checks which he then presented to Yvonne
23 Santos, the wife of Izayah Santos in her capacity as a cashier. That during the criminal
24 enterprise, Yvonne Santos had been admonished by the Navy Exchange for servicing Izayah
25 Santos in her capacity as a cashier which resulted in the defendant, BEN JOE PEREZ CRUZ,
26 presenting the worthless checks written by Izayah Santos in his stead. That during the criminal
27 enterprise, the defendant, BEN JOE PEREZ CRUZ, received stolen currency and property
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1 acquired by Izayah Santos from his worthless check writing as a means to compensate him for
2 his participation in the criminal enterprise.

3 6. The defendant agrees to be joint and severally liable for restitution in the amount of
4 \$3,349.98 to the Navy Exchange in Guam. The dollar amount of restitution the defendant is
5 required to pay may be decreased by the value of the items recovered by the United States
6 Government only if the items are determined to be marketable by the Guam Navy Exchange.

7 7. The defendant understands that notwithstanding any agreement of the parties, the
8 United States Probation Office will make an independent application of the Sentencing
9 Guidelines or determine an appropriate sentencing range. The defendant acknowledges that
10 should there be discrepancies in the final Sentencing Guidelines or sentencing range, projected
11 by her counsel or any other person, such discrepancy is not a basis to withdraw her guilty plea.

12 8. The defendant agrees to waive any right to appeal or to collaterally attack his
13 conviction. The defendant reserves the right to appeal the sentence actually imposed in his case.

14 9. The defendant acknowledges that he has been advised of his rights as set forth below
15 prior to entering into the plea agreement. Specifically, defendant has been fully advised of, has
16 had sufficient opportunity to reflect upon, and understands the following:

17 a. The nature and elements of the charge and the mandatory minimum penalty
18 provided by law, if any, and the maximum possible penalty provided by law;

19 b. His right to be represented by an attorney;

20 c. His right to plead not guilty and the right to be tried by a jury and at that trial, the
21 right to be represented by counsel, the right to confront and cross-examine witnesses against him,
22 and the right not to be compelled to incriminate himself, that is, the right not to testify;

23 d. That if he pleads guilty, there will not be a further trial of any kind on the charges to
24 which such plea is entered so that by entering into the plea agreement, he waives, that is, gives
25 up, the right to a trial;

26 e. That, upon entry of a plea of guilty, or thereafter, the Court may ask him questions
27 about the offenses to which he has pled, under oath, and that if he answers these questions under
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oath, on the record, his answers may later be used against him in a prosecution for perjury or false statement if an answer is untrue;

f. That he agrees that the plea agreement is voluntary and not a result of any force, threats or promises apart from his plea agreement;

g. That he reads, writes and speaks the English language and has no need for an interpreter;

h. That he has read the plea agreement and understands it; and

i. The Defendant is satisfied with the representation of his lawyer and feels that his lawyer has done everything possible for his defense.

DATED: 9-20-07


BEN JOE PEREZ CRUZ
Defendant


DATED: 9-20-07


RAWLEN M.T. MANTANONA
Attorney for Defendant

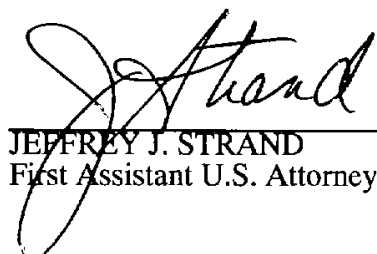
LEONARDO M. RAPADAS
United States Attorney
Districts of Guam and NMI

DATED: 9/21/07

By:


RYAN M. ANDERSON
Special Assistant U.S. Attorney

DATED: 9/21/07


JEFFREY J. STRAND
First Assistant U.S. Attorney